

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3664 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MADHAVJI DAHYABHAI MADAVIA

Versus

PRAVINABEN KANAIIYALAL JOSHI

Appearance:

MR ASHIN H DESAI for Petitioner
MR CL SONI for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
GOVERNMENT PLEADER for Respondent No. 3
MR YS LAKHANI for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/06/98

ORAL JUDGEMENT

This petition under Article 226 of the Constitution challenges the order dated 31-1-1997 passed by the Collector, Junagadh (Annexure A) granting N.A. permission and sanctioning the layout plan submitted by respondent no.1 for N.A. use on Plot No. 179 in Veraval

town. The petitioner - President of Sarvodaya Housing Society- owning and possessing final plot no.180 in Veraval has also prayed that respondent no.1 be restrained from developing the final plot No. 179 without making provision of continuous private roads as per the Regulations.

2. In view of the course that this Court proposes to adopt, it is not necessary to state the facts in details. Suffice it to say that aggrieved by the order of the Collector, Junagadh in so far as the lay out plan sanctioned by the Collector, Junagadh, in respect of Final Plot No.179 does not provide for continuous internal roads as compared to the internal roads on final plot No.180, the petitioner has already filed a revision application before the State Government which is still pending for hearing. It is on account of refusal of interim relief by the State Government by order dated 30-4-1997 (Annex.B), which has prompted the petitioner to file the present petition.

3. Mr.A.H.Desai learned Counsel for the petitioner submits that Regulation III(4)(v) of the Town Planning Scheme NO.1, Veraval, provides as under:

(v). The alignment of internal road or roads shall be regulated to be in continuation of the public or private roads continuous to the applicant's plots, but in case of termination of an internal road or roads, 13.5 mts.(44 diameter turning circle or 18 Mts. x 6 mts. (60' x 20') shall be enforced.

Provided that this requirement may be waived if-

(i). the length of such road does not exceed 55 mts. in case of 6 Mt. (20') wide road and

(ii). the length of such road does not exceed 110 mts. in case of 7.5 mts.vide road."

It is submitted that the petitioner has filed the aforesaid Revision Application on the basis of the aforesaid regulation but after filing revision Application, the State Government has straightway passed the aforesaid order dated 30-4-1998 without giving the petitioner any opportunity of being heard.

4. Mr.Desai further submits that he was himself hospitalized for more than a month and, therefore, he could not remain present when the matter was heard by this Court on September 19, 1997 and that the lack of his assistance is also clear from the fact that no reference is made about the aforesaid regulation in the order dated 19-9-1997 of this Court.

5. On the other hand, Mr.C.L.Soni, learned Counsel for respondent no.1 and Mr.Y.S.Lakhani,learned Counsel for respondent no.4 municipality have opposed the petition and have submitted that although the interim relief was refused , the main revision application is pending before the Government and therefore, the petitioner has already availed of alternative remedy against the order dated 31.1.1997 of the Collector and hence this Court need not hear the matter on merits. Mr.Soni states that respondent no.1 has already allotted ten sub-plots to different parties.

6. Having heard the learned Counsel for the parties, this Court is of the view that since the revision application is still pending before the State Government for hearing, it will be just and proper to direct the Government to hear and decide the revision application as expeditiously as possible and in any case on or before 31-7-1998. Looking to the subject matter of the revision application, it will be open to the revisional authority to take the assistance of a competent technical officer from the Town Planning Department of the State Government.

7. In view of the fact that if any further change is made at the site the petitioner's revision application may become infructuous it also appears to be in the interest of justice to direct the parties to maintain status quo prevailing as on today till 31-7-1998.

8. It is clarified that this Court has not expressed any opinion on the merits of the controversy between the parties .

9. This petition is disposed of in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent with no order as to cost.

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